



Virginia  
Regulatory  
Town Hall

## Periodic Review and Retention of Existing Regulations Agency Background Document

<b>Agency Name:</b>	Department of Labor and Industry/Safety and Health Codes Board
<b>VAC Chapter Number:</b>	16 VAC 25-80-10
<b>Regulation Title:</b>	Access to Employee Exposure and Medical Records
<b>Action Title:</b>	Periodic Review of Regulation Pursuant to Executive Order 25 (98)
<b>Date:</b>	July 17, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

### Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

Provides employees and their designated representatives a right of access to relevant exposure and medical records and provides access to representatives of the Department of Labor and Industry to relevant employee exposure and medical records. This access is provided to promote the recognition of workplace hazards and the subsequent reduction of occupational disease. There are three major requirements for employers:

1. Preserve and maintain exposure and medical records pertinent to an employee's occupational exposure to toxic substances or harmful physical agents - Employee exposure records and analyses based on exposure or medical records are to be retained for thirty (30)

years. Employee medical records are to be retained for the duration of employment plus (30) years.

2. Assure access to pertinent exposure records by the exposed employee and the employee’s designated representatives; assure employee access to medical records of which the employee is the subject and to an employee’s designated representative provided the employee has provided written consent - Employee and designated representative access are to be provided within fifteen (15) days of the request.

3. Inform employees of their rights (upon entering into employment and annually thereafter) under the regulation and of the requisite procedure for exercising those rights.

**Basis**

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

The regulation is mandated under both state and federal code and fulfills those minimum requirements. Virginia Code § 40.1 - 22(5) states that “the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity. However, such standards shall be at least as stringent as the standards promulgated by the Federal Occupational Safety and Health Act of 1970 ( P. L. 91 - 596).”

Since Federal OSHA requires that State Plans be at least as effective as Federal OSHA, Virginia’s Access to Employee Exposure and Medical Records must be identical to Federal OSHA’s Standard at 29 CFR 1910.1020 - “Access to Employee Exposure and Medical Records,” to be considered to be at least as effective as that Federal Standard.

**Public Comment**

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

No public comments were received on this regulation during the 30 day public comment period which began April 24, 2000. The agency and the Safety and Health Codes Board did not establish an informal advisory group for the purpose of assisting in the periodic review.

**Effectiveness**

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

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The regulation has three goals:

1. Reduce the incidence of material impairment of the health of Virginia workers due to workplace exposure to known hazards.
2. Provide access to employee records to determine exposure.
3. Protect the public's health, safety and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

The primary goals of this regulation is to provide employees and their designated representatives a right of access to relevant exposure and medical records; and to provide representatives of the Commissioner a right of access to these records in order to fulfill responsibilities under the federal Occupational Safety and Health Act. This access is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease.

The scope and impact of the regulation are limited to the workplace or other such occupational settings and, as such, have no impact on the institution of the family or family stability.

The regulation is clearly written and understandable by the individuals and entities affected.

## Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

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The alternatives considered for this regulation were whether to retain the existing regulation as promulgated or repeal the regulation and adopt the federal OSHA identical regulation. During the previous regulatory review, the Department established an independent review panel to consider the need for changes or repeal of the regulation. The panel recommended retention of the regulation in its present form. The Board determined that, under its mandate, the agency should retain the regulation unchanged as it is not a burden to employers and provides for retention of first aid records that are often helpful to employers.

## Recommendation

*Please state that the agency is recommending that the regulation should stay in effect without change.*

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The Department of Labor and Industry and the Safety and Health Codes Board recommend that the regulation should stay in effect without change.

### Family Impact Statement

*Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.*

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The scope and impact of the regulation are limited to the workplace or other such occupational settings and therefore have no impact on the institution of the family or family stability.